

BOARD OF APPEALS CASE NO. 5168

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BEFORE THE

APPLICANTS: Tim & Joyce Swecker

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ZONING HEARING EXAMINER

**REQUEST: Variance to allow a 6 foot high
fence within the required front yard setback;
801 Woodmont Court, Joppa**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 8/22/01 & 8/29/01

HEARING DATE: November 5, 2001

Record: 8/24/01 & 8/31/01

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Tim & Joyce Swecker, are requesting a variance, pursuant to Section 267-24B(1) of the Harford County Code, to allow an existing fence higher than four (4) feet (six (6) feet requested) in an R3/Urban Residential District.

The subject property is located at 801 Woodmont Court within the Magnolia Farms subdivision and is more particularly identified on Tax Map 69, Grid 1-C, Parcel 138. The parcel consists of 7,971 square feet, is zoned R3/Urban residential and is entirely within the First Election District.

The Applicant appeared and testified that he contracted with Long Fence in 1998 to erect his fence. The Applicant applied for and received approval for a six (6) foot high fence from the Magnolia Farms Homeowner's Association. The Applicant assumed that his contractor had obtained all permits. The Applicant described his property as a well maintained and landscaped corner lot. The fence surrounds the rear of his property and was erected for several reasons. First, his grandchildren often play outdoors in the back yard and he is always concerned for their safety. He does not feel as though a four foot fence provides adequate security. There is also a substantial amount of traffic associated with the three roads that impact the front and sides of his property and he often needs to clean up debris that would otherwise be in his back yard but for the fence. The Applicant also said that three levels of schools use his address as bus stops so there are quite a few neighborhood children that cross his property fairly regularly.

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The Applicant did not believe there were any adverse impacts associated with the fence on neighboring properties and, because it surrounds the rear of his home, there is no interference with motorists' line of sight.

The Applicant stated that there were numerous homes in his neighborhood that had fences similar in height and appearance to his. The Applicant submitted a number of photos showing other fences in his neighborhood that appear to be identical or very similar to his in height and appearance. Additionally, the Applicant produced a letter, dated October 15, 2001, from the Magnolia Farms Homeowner's Association, that supports his application and confirms that other similarly sized fences are commonly found in this subdivision.

The Department of Planning and Zoning supports approval of the Applicant's request stating:

"The subject property contains three road frontages and is unusually shaped. The required building setbacks, drainage and utility easements and landscape buffer areas greatly reduce the building envelope."

The Department went on to conclude,

"The Department finds that the subject property is unique. The property is bordered by three (3) roads and as defined by the Code, is subject to three (3) front yard setbacks. In this case the lot is subject to a twenty-five (25) foot setback from Magnolia Ridge Road and Woodmont Court and a forty (40) foot setback from Trimble Road (since Trimble Road is an Urban Collector road according to the Harford County transportation Plan). The area enclosed by the fence serves as the side and rear yard area for the residence. The fence provides a buffer for this area of the lot from Trimble Road and Magnolia Ridge Road. If approved, the requested variance will not adversely impact the intent of the Code or the neighborhood."

CONCLUSION:

The Applicants, Tim & Joyce Swecker, are requesting a variance, pursuant to Section 267-24B(1) of the Harford County Code, to allow an existing fence higher than four (4) feet (six (6) feet requested) in an R3/Urban Residential District.

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Section 267-24B(1) of the Harford County Code provides:

“Fences and walls. Fences and walls may be located in required yards in accordance with the following:

- (1) Front yards. For single-family detached units, walls and fences shall not exceed four feet in height above ground elevation. Where fences and walls are an integral part of the unit design and are applied in a consistent and coordinated pattern throughout the project, fences and walls may be constructed to a maximum of six feet above ground elevation. For continuing care retirement communities, consistent and coordinated fencing or walls may be constructed to a maximum of eight feet above ground elevation provided strategically located gates are provided for emergency access.**

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."**

The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two-step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two-step sequential process:

- 1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.**
- 2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the**

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ordinance caused by the property's uniqueness exists." Cromwell v. Ward, 102 Md. App. 691 (1995).

The Hearing Examiner finds that the subject property is unique. It is subject to three front yard setbacks because of its corner configuration and is on a heavy traffic corner lot. The Applicant expressed legitimate and immediate concerns related to the need for the fence to be at a height that provides reasonable security and privacy. Other homeowner's in this subdivision are commonly allowed to erect such fences for similar reasons. It would impose a disproportionate hardship on this Applicant if the request were denied. The Hearing Examiner concludes further that there are no adverse impacts on neighboring properties resulting from the height of the fence nor will the purposes of the Zoning Code be impaired as a result of the grant.

For the reasons stated, the Hearing Examiner recommends approval of the Applicants' request, subject to the following conditions:

1. The Applicants obtain the necessary permit and inspections for the fence.
2. The height of the fence not be further increased.

Date NOVEMBER 27, 2001

William F. Casey
Zoning Hearing Examiner